3. *End user eligibility*

The *Further Notice* proposes to eliminate all user eligibility limitations applicable to CMRS providers under Part 90.[36] PCIA supports eliminating such restrictions, and agrees with the Commission that maintaining such restrictions is inconsistent with imposing obligations on Part 90 CMRS providers "to offer service to the public on a nondiscriminatory basis."[37]

4. *Permissible uses*

PCIA also supports the *Further Notice* proposal -- as well as the separate, but related, Common Carrier Bureau proposal[38] -- to eliminate restrictions on permissible communications and permit use of transmitters for both common carrier and private operation.[39] For similar reasons, PCIA also supports liberalized use of common or private carrier facilities for incidental and auxiliary communications, subject to any notification procedures as deemed necessary.[40] According to the *Section 22.119 Notice*, the original rationale for Section 22.119 and related use limitations was to ensure the availability of sufficient capacity on common carrier systems, but this issue has become far less of a

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[36] *Id.*, ¶75.

[37] *Id.*

[38] *Deletion of Section 22.119*, FCC 94-113 (rel. June 9, 1994) ["*Section 22.119 Notice*"].

[39] *Further Notice*, ¶79.

[40] For example, auxiliary cellular services under the Cellular Service Option in Section 22.930, like wireless PBXs using cellular frequencies, are no longer subject to a notification requirement, but only a general non-interference condition. To date, this does not appear to have caused significant interference problems.

concern with modern technological capacity enhancements.[41] On the other hand, there may be reasons for retaining some use restrictions on shared channels licensed under Part 90. In this circumscribed instance, use limitations may continue to serve a purpose by ensuring that adequate communications facilities remain available for other purely private users sharing the channel.

5. Station identification

The Commission has sought comment on the need to maintain or extend station identification requirements for CMRS transmitters.[42] As the Commission appropriately recognizes, station identification requirements are unnecessary for licensees of exclusive channels over well-defined geographic regions since, in the event of interference, these facilities can easily be identified from Commission records.[43] Under the same rationale, exemptions could also feasibly be extended to cases where service areas are transmitter-defined, but prior coordination has taken place and the contours of the station are available as a matter of record. In the remaining cases, including situations where channels are shared, the basic requirement appears to continue to serve a useful purpose. However, the requirement should be modified to require station identification only once an hour on the

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[41] *Section 22.119 Notice*, ¶2-4.

[42] *Further Notice*, ¶82.

[43] *Id.*, ¶81.

hour (or soon thereafter if the channel is occupied at the time), rather than every half-hour.[44]

6. *General licensee obligations*

In the *Further Notice*, the Commission has identified "rules on licensee management and control of station facilities" under Part 22 and Part 90 as being "quite similar," although it notes that "minor variations . . . exist."[45] While PCIA concurs that the regulations are facially similar, it is PCIA's understanding that Part 90 licensees are accorded substantially greater latitude in negotiating the terms of management contracts. PCIA believes that similar flexibility should be applied to all CMRS operators. Specifically, PCIA anticipates that certain practices allowing greater division of responsibility between a licensee and a system manager could be beneficial to the development of the wireless market and would not violate the provisions of the Communications Act.

7. *Equal employment opportunities*

While PCIA generally favors market discipline over regulatory action and opposes the addition of new regulatory burdens on any CMRS carrier, PCIA supports the Commission's extension of Equal Employment Opportunity ("EEO") obligations to all CMRS carriers as a

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[44] As PCIA noted in its comments in the *Part 22 Rewrite*, this requirement would also be consistent with the broadcast regulations, which require that "[b]roadcast station identification announcements shall be made . . . hourly as close to the hour as feasible, at a natural break in program offerings." *Telocator Part 22 Rewrite Comments* at 39 n.39.

[45] *Further Notice*, ¶83.

matter of sound public policy.[46] The required imposition of common carrier regulation on newly reclassified Part 90 CMRS offerings compels extension of EEO requirements to all CMRS licensees. Nonetheless, in light of the companies and services now encompassed within this requirement, it may be appropriate to revisit the 16 employee benchmark below which licensees are exempt from applicable EEO filing requirements.

8. Standby facilities

Although not explicitly noted in the *Further Notice*, there are disparities in the regulations governing standby facilities that should be corrected. Today, the Part 22 rules provide for permissive authorization of standby facilities, while Part 90 rules do not.[47] Given the apparent benefits of Part 22 licensees' ability to cut-over rapidly to new facilities in the event of equipment failure or natural disaster, PCIA believes the CMRS rules should accommodate the optional licensing of standby facilities for all CMRS operators.

V. LICENSING RULES AND PROCEDURES

A. Applications Forms and Procedures

Based on the extent of the proposed substantive rule modifications, the *Further Notice* proposes the use of a new application form for CMRS and PMRS operations.[48] In so doing, the Commission seeks to achieve a number of other laudable goals, including

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[46] *Id.*, ¶85.

[47] *Compare* 47 C.F.R. §22.107 (1993) *with* 47 C.F.R. §§90.1-90.741 (1993).

[48] *Further Notice*, ¶109.

standardizing the collection of information, eliminating some unnecessary information collections, and preparing for the advent of electronic filing and automated processing.[49] Although PCIA supports the Commission's policy goals, PCIA believes that attempting to adopt specific form changes prior to concluding the technical rules rewrite may be premature. Furthermore, as discussed below, PCIA suggests that the same policies warranting adoption of a new facilities application form support adopting similar new modular forms for facilities status notifications and transfers of control/assignments of license.

1. While PCIA supports the use of a single modular form, commenting on the proposed form is premature

PCIA supports the Commission's proposal to adopt a single unified application form that can be used by all CMRS and PMRS applicants in all terrestrial mobile services. As noted by the Commission, the use of a single, streamlined form to provide basic information holds great promise to simplify the application process.[50] Indeed, many mobile service operators have had both common carrier and private radio licenses, will continue to have operations that include both CMRS licenses and PMRS licenses, and the use of a single form will streamline application preparation and may also improve the accuracy of submitted forms. Moreover, use of a modular scheme with separate schedules for service-specific information will ensure that applicants provide only the technical information necessary to the

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[49] *Id.*, ¶110.

[50] *Id.*

service in which a license is sought, and omit the provision of information unnecessary for that particular type of license.

PCIA also strongly supports the Commission's effort to format the revised form in a manner that will facilitate electronic filing of the forms and automated entry of the licensing information. PCIA has long supported the transition to electronic filing as soon as feasible. Automated filing and expedited automated entry of the licensing information will aid in timely Commission action on the applications, facilitate Commission recordkeeping, and hopefully ease public access to facilities databases, thereby freeing the Commission's staff for more important licensing tasks.

While PCIA supports the Commission's efforts to develop a new form for mobile services, initial review suggests that there are some issues that will need to be resolved before the form is finalized.[51] PCIA believes, however, that attempting to craft a specific form in advance of finalizing rules would be counterproductive and premature. Instead, the Commission should revisit this issue *after* issuing final rules governing CMRS operations.[52] At that time, the Commission staff should pursue discussions with industry representatives on the content of the form and instructions. In this manner, the Commission could ensure that the form requires only the information actually mandated by statute or necessary for the Commission staff to process license requests.

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[51] For example, the proposed form, while intended to streamline application processing, is substantially longer than the current form used by Part 22 paging licensee and asks for information not relevant to a paging license request.

[52] As noted below, the *Budget Act* does *not* mandate conversion to a single form by the August 10, 1994, deadline.

2. *Application form transition procedures*

PCIA favors a single cut-over date for all services to begin using a new FCC form with enough lead time to ensure a smooth transition. Implementation of a single revision is a far superior approach for large as well as small carriers. Multiple or phased changes for different classes of services would create problems with respect to the education of small entities that may have only limited, irregular need to file applications with the FCC; a one time change minimizes confusion and decreases the likelihood of the Commission receiving superseded application forms. Moreover, many large carriers employ computerized versions of the application forms, and they generally would prefer to make a single change in their software programs, with adequate lead time to implement the new requirements.

The Commission should continue to use existing forms applicable to each service until a new unified form can be finalized and potential applicants are educated about its use. In particular, there must be sufficient time for the education of smaller applicants (both CMRS and PMRS) about the new requirements and new forms. Since the *Budget Act* does not appear to require CMRS entities to begin to use the same form as of August 10, 1994, PCIA suggests deferring use of the new form until six months after the final form has been published in the Federal Register.

3. *The Commission should utilize modified one step licensing for all CMRS offerings*

Although not specifically addressed in the Commission's *Further Notice*, this proceeding appears to be an appropriate forum for considering simplification of the

construction notification procedures. PCIA recommends that the Commission adopt a new standardized, modular notification of status of facilities form. In so doing, PCIA also believes the Commission should reconsider revisions to its certification of completion of construction procedures. Specifically, PCIA understands that Part 90 licensees in many cases receive computer-generated Form 800A notifications near the end of the construction period requesting confirmation that construction has been completed. In the event that a permittee or conditional licensee does not respond after two such notices, a final computer-generated notice is mailed that indicates the license will be terminated in the event a response is not received within a stated time. Since the process appears to be almost entirely automated, yet has significant benefits for permittees, PCIA encourages the Commission to implement similar procedures uniformly for all CMRS applicants.

4. The Commission should adopt uniform forms for transfer of control and assignment applications

Currently, Part 22 transfers of control and assignments both are filed on Form 490, Part 90 assignments are filed using a Form 574 and either a letter or Form 1046 to evidence the assignment of the facilities, and Part 90 transfers of control are filed on a Form 703. Since the Commission is attempting to reduce the distinctions between CMRS services, PCIA suggests that development of a single form for all CMRS transfers and assignments should be considered.[53] As the substantive transfer and assignment rules are conformed between services, it is apparent that some questions on existing forms will be superfluous and some

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[53] As part of that process, the Commission should delete the requirement that applicants for assignment or transfer of control submit copies of all authorizations. This requirement is burdensome for both applicants and the Commission. Instead, the form should require only a listing of the call signs involved.

forms will have information requests that are insufficient to enable the Commission to reach the public interest finding required under the Communications Act.[54] For the reasons stated by the Commission for adopting a single form for initial and modified authorizations, uniform applications should be promptly proposed and adopted with respect to transfers of control and assignments of authorizations.

5. *The Commission should consider shifting some technical licensing functions to private parties*

As one possible means of expediting the application process, PCIA believes the Commission should consider shifting some frequency coordination responsibilities to private parties. PCIA is not advocating a generalized frequency coordination requirement, such as that which exists for Part 21 point-to-point microwave stations, but rather a transfer of some of the technical interference-related licensing functions to a third party coordinator. Such a scheme would have the benefit of allowing the Commission to apply its staff resources to application issues that are required, by statute, to be passed on by the Commission. At the same time, as shown by private radio services where many technical application issues are dealt with by frequency coordinators, revising application procedures in this fashion could well significantly increase the speed of processing for all CMRS applications.

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[54] PCIA agrees with the Commission that the level of qualifying information currently required for transfer of control and assignment applications (especially the former) between Part 90 and Part 22 is very different and must be conformed. *See Further Notice* at ¶114. Form 490 (Part 22) currently seeks full qualifying information about the proposed transferee. Form 703 (Part 90) seeks virtually no information about the proposed transferee.

6. Speed of processing

Differential regulatory requirements are not the only source of disparities among classes of CMRS licensees. Substantial competitive impacts can be caused, in particular, if the speed of processing of one class of applications is significantly faster than for other classes of applications. PCIA recognizes that the source of this differential is, in part, due to the different regulatory requirements applicable to private and common carrier applications. However, PCIA urges the Commission to monitor carefully the speed of processing of CMRS applications to ensure that significant differences do not persist. In this regard, PCIA offered in the *Part 22 Rewrite* a number of suggestions for generally improving the speed of processing of Part 22 applications that would potentially benefit all CMRS licensees,[55] and recommends the Commission consider adopting these proposed revisions in this docket.

B. Application Fees

The disparate fees paid by substantially similar CMRS operators is one relatively clear area where uniformity can and should be mandated. Part 22 applicants will soon pay a $265 filing fee per application in cellular and a $265 filing fee per transmitter for non-cellular

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[55] These include modifications to the conditional licensing scheme proposed in the *Part 22 Rewrite*; adopting an amnesty program; clarifying certain definitions within the Commission's rules; permitting the use of magnetic media filings in lieu of microfiche filings; permitting renewal filings at any time during the last year of the license; deleting and modifying a number of items on the Commission's FCC Form 401; allowing changes in emissions type on FCC Form 489s; extending opportunities for pre-construction; extending the periods associated with consents for transfers of control and assignments; eliminating inner site filings; deleting traffic study requirements for additional channels; redefining "major" in the context of amendments and modifications to extend the range of permissible filings; and other changes. *See generally Telocator Part 22 Rewrite Comments*.

services.[56] In contrast, Part 90 applicants pay a fee of only $35 per call sign and can file for up to six transmitters on a single application. The *Further Notice* proposes to require all CMRS applicants -- including those authorized under Part 90 -- to pay the $265 common carrier application fee.[57] This fee should be assessed on a "per application" basis to the greatest extent permissible under Section 8 of the Communications Act.[58] Otherwise, the fees should be assigned on a per transmitter basis. In addition, all CMRS providers should be required to conform to the common carrier fee filing schedule for the various classes of status of facilities notifications.[59]

As the Commission strives to achieve parity in application fees, however, it should factor in coordination costs related to some applications. To the extent applicants are required to obtain prior frequency coordination for their proposals, the Commission's workload is commensurately reduced. In such circumstances, the application fees also should be reduced.

C. Regulatory Fees

PCIA also believes the *Budget Act* was intended to require all CMRS licensees to pay comparable regulatory fees. Consistent with this interpretation, the *Further Notice* proposes to require Part 90 CMRS licensees to pay the same per-subscriber fee as other CMRS

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[56] *See Application Fees*, FCC 94-141 (rel. June 8, 1994) (Raising common carrier application fees from $230 to $265 and setting an effective date 30 days after publication of the order in the Federal Register).

[57] *Further Notice*, ¶115.

[58] 47 U.S.C. § 158 (1988 & Supp. IV 1992).

[59] *Further Notice*, ¶115 n.186.

providers.[60] While PCIA concurs with the Commission that achievement of regulatory parity requires that all CMRS licensees pay regulatory fees on the same basis, the Commission should reconsider the amount of the fees required. Under the *Budget Act*, the FCC is directed to adjust the regulatory fees schedule to approximate the regulatory costs associated with various classes of licenses.[61] Since the Commission is proposing to reduce the overall level of regulation for CMRS licensees and reclassify existing services, reexamination of the fee schedule would appear to be necessary, with the intent to reduce fee levels consistent with the regulatory fees policies.

D. Application of Section 309 to the Licensing of Newly Reclassified Part 90 CMRS Facilities

The Commission is compelled by the Communications Act and the *Budget Act* to subject applications proposing new facilities, applications proposing major modifications to existing CMRS licenses, and major amendments to all CMRS applications to the full panoply of Section 309 procedures. These procedures include public notice requirements, provisions for the filing of mutually exclusive applications and petitions to deny, and arrangements for selecting from among competing mutually exclusive applications.[62] As recognized by the Commission and discussed below, the requirement of the *Budget Act* to subject all CMRS licensees and applicants to common carrier regulation leaves very little subject to discretion in this realm.

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[60] *Id.*, ¶116.

[61] *Budget Act*, §6003(a)(1).

[62] 47 U.S.C. §309 (1988 & Supp. IV 1992).

1. Applications subject to Section 309 procedures

Section 309, by its terms, applies only to applications to new facilities, major modifications of existing facilities, and major amendments to pending applications. While the applications that constitute requests for new facilities are generally well delineated, PCIA believes the Commission should clearly articulate and carefully limited what constitutes a "major" modification or amendment. Because amendments and modifications that are considered "major" trigger competitive bidding opportunities, to the greatest extent possible, CMRS licensees should be permitted to make "minor" modifications to existing facilities on a permissive basis and without any required Commission notification. Similarly, the Commission should permit liberal "minor" modifications to pending applications. In accordance with these objectives, PCIA supports the *Part 22 Rewrite* proposal to classify a major filing as "a request for Commission action that has the potential to affect parties other than the applicant," and classify minor filings as all filings that are not major.[63]

Applications proposing to modify an existing authorization should follow the existing Part 22 procedures. Under Part 22, licenses may submit only information that is being modified. Part 90 licensees, on the other hand, must submit a full Form 574, listing all of the information associated with the particular call sign as it will continue to exist after the modification is implemented. In view of the fact that the proposed Form 600 appears to reflect the Part 22 approach, PCIA supports the Commission's tentative determination to require licensees to submit only the information related to a proposed modification. This

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[63] *See Telocator Part 22 Rewrite Comments* at 41. These comments also provide a detailed list of changes regularly made by paging licensees and characterized them as either major or minor, consistent with this standard.

approach conserves licensee resources and is more efficient. When the Commission issues a modified license, however, it should include full information about all the facilities licensed under that particular call sign (and not just the information that is the subject of the applicable modification application).

2. *Mutually exclusive applications*

Under Section 309, which will be applied to all CMRS licensees, Part 90 CMRS applicants will be faced with the potential for mutually exclusive applications. In such circumstances, the *Further Notice* proposes generally to continue the use of the current filing window procedures in Part 22 services, with some modifications, and to use competitive bidding to select a tentative licensee where mutually exclusive initial applications are filed. The Commission tentatively concludes that initial applications and certain major modifications in Part 22 services (except cellular unserved area Phase I applications) should be subject to a 30-day filing window for the submission of mutually exclusive applications (down from 60 days). The *Further Notice* also tentatively finds that, in general, similar services should be subject to consistent licensing procedures that allow equal opportunity for entry, but also raises the possibility that some Part 90 services should be subject to modified procedures.

PCIA believes that similar procedures should be applied to all CMRS applicants. Moreover, consistent with the position taken in the *Part 22 Rewrite*, PCIA opposes the adoption of a first come, first served application process, unless modified.[64] While the

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[64] *Telocator Part 22 Rewrite Comments* at 5-9.

agency is to be commended for seeking to speed the processing of applications and eliminate controversies associated with mutually exclusive applications, a first come, first served policy, applied to paging licensees who must file on a transmitter-by-transmitter basis, likely would lead to an increase in the number of applications filed by entities seeking merely to prevent expansion of market area served by an existing licensee or to resell the authorization at profit. Existing operators will be forced to file for and construct facilities earlier than necessary just to protect their anticipated market area.

PCIA observes that, in any event, the current rules have generally worked well. The agency has been required to lottery only a small percentage of the thousands of applications it receives annually. In fact, the prospect of a lottery and/or competitive bidding has deterred illegitimate filings and encouraged settlements involving competing applications. By increasing a new filer's chances for success at blocking incumbent licensee's future operations, the FCC is likely to open the floodgates to speculators intent upon greenmailing legitimate licensees. Existing licensees also are likely to increase the number of petitions to deny that are being filed, since such petitions are the only means to protect their existing operations. Thus, the agency's proposal may well increase both the number of applications received and the number of contested proceedings, ultimately causing further delays to the licensing process.

Instead, as discussed above, the Commission should rapidly implement a system of exclusive market-based licensing. Unlike first come, first served licensing, market area exclusivity will further the Commission's goal of increasing speed of processing. Moreover,

such an approach limits the potential for speculative filings and offers needed flexibility to existing carriers.

As a short term solution until licensing on a market basis can be achieved, PCIA reiterates its recommendation in the *Part 22 Rewrite* proceeding that the Commission revise its proposal to allow co-channel licensees within 250 kilometers of the facilities proposed in any application to file a mutually exclusive application, to be submitted within a shortened, 30 day window.[65] This approach would help to expedite licensing, while assisting in minimizing the adverse effects described above.

3. Petition to deny procedures for CMRS applications

PCIA agrees with the Commission that the *Budget Act* requires public notice and petition to deny procedures consistent with Section 309 of the Communications Act for all CMRS providers, and generally concurs with the Commission's proposals to implement this aspect of the Act.[66] The *Further Notice*, however, does not specifically address the issue of settlement payments and buyouts. Under the present rules, Part 22 contains restrictions that limit monetary payments to third parties to settle contested proceedings. Part 90 does not, however, contain similar restrictions, most probably because these measures are designed to combat a form of abuse of process that has been unique to licenses granted under Section 309 procedures. Unless similar provisions are implemented for all CMRS providers to police

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[65] *Telocator Part 22 Rewrite Comments* at 9.

[66] *Further Notice*, ¶117-118.

settlements, newly reclassified Part 90 CMRS operators may be exposed to abuses of the procedural opportunities by entities seeking primarily to receive a payoff.

E. Pre-Authorization Construction

PCIA believes that the Commission should allow licensees greater flexibility to engage in pre-authorization construction. In the *Further Notice*, the Commission observes that "[u]nder Part 90, there is no restriction on when an applicant may commence construction, provided that it does not begin operating prematurely in violation of the rules."[67] Thus, the Commission has experience suggesting that liberal pre-authorization construction can occur without engendering significant problems. PCIA urges the Commission to extend the circumstances where pre-authorization construction can occur for CMRS licensees to all situations where: (1) a carrier agrees to undertake construction at its own risk; (2) FAA regulations have been met or are inapplicable; and (3) environmental regulations have been met or are inapplicable. Extending pre-authorization construction in this manner will not cause any unfairness to any party, since carriers would be constructing at their own risk, and would significantly speed time to service for mobile operations.

F. Conditional and Special Temporary Authority ("STA")

The *Further Notice* also seeks comment on conforming the rules on operation under conditional and special temporary authority between Part 22 and Part 90 CMRS licensees.[68]

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[67] *Id.*, ¶136.

[68] *Id.*, ¶137-138.

While PCIA generally concurs with the FCC that parity between CMRS licensees in this context is warranted, PCIA suggests more general reforms to "retain flexibility in [the FCC's] STA procedures while continuing to comply with the statutory requirements of Section 309(f)."[69] In particular, PCIA believes the Commission could utilize blanket STAs ("BSTAs"), as are currently used for the licensing of common carrier microwave stations under Part 21 of the Commission's Rules, to permit interim operation of uncontested facilities. Under Part 21 procedures, a licensee obtains a 6-month company-wide BSTA that permits operation of point-to-point microwave facilities after the facilities application is placed on public notice. The use of such procedures has apparently both limited the number of STA requests the staff is asked to process and afforded carriers greater flexibility in initiating service from new facilities. In addition, through the BSTA application process, the Commission is able to review the qualifications of the BSTA holder. PCIA believes that similar BSTA procedures could be implemented for CMRS operations, perhaps revised to permit operation 40 days after public notice to ensure that an application is uncontested.

G. License Terms and Renewal Expectancies

PCIA supports the proposed license term of ten years for all CMRS licensees.[70] As noted in the *Further Notice*, modifications to achieve parity in license terms "are consistent with the objective of achieving regulatory symmetry,"[71] and the term of a license is an area

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[69] *Id.*, ¶138.

[70] *Id.*, ¶140.

[71] *Id.*

where symmetry can easily be attained. PCIA also believes that a unified renewal expectancy standard as defined under the cellular and PCS rules should be applied to all CMRS licensees.

H. Assignment of Licenses and Transfer of Control

Depending upon the service, the Commission's rules for both Part 22 and Part 90 licensees contain a number of restrictions on the transfer of licensed facilities and/or requirements for a showing that no trafficking is involved in the proposed assignment of license or transfer of control of a licensee. PCIA has long supported measures to ensure that only serious applicants submit applications and to deter speculative filings. To the extent that requiring a showing of a lack of trafficking intent helps to enforce such measures, they should continue to be employed.[72] Otherwise, particularly in a competitive bidding environment, the Commission should permit free alienation consistent with the requirements of the Communications Act.

I. Licensing of Combined CMRS and PMRS Services

The *Further Notice* proposes to extend the existing scheme permitting PCS licensees to provide both CMRS and PMRS offerings using the same spectrum to some categories of CMRS licensees.[73] Unfortunately, the Commission's grant of flexibility would be limited to Part 90 services where both CMRS and PMRS operation are allowed. Part 22 licensees that

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[72] PCIA Petition for Reconsideration, PP Docket No. 93-253 (filed Mar. 28, 1994). PCIA demonstrated that the filing requirements imposed by that order are overbroad and unduly burdensome.

[73] *Further Notice*, ¶148.

are now limited to CMRS operation would not be able to avail themselves of this opportunity.[74]

As PCIA has previously indicated in a petition pending before the FCC, it supports measures that will increase flexibility for licensees to offer the broadest range of new services.[75] PCIA thus urges adoption of policies extending comparable flexibility to all CMRS licensees, as necessary for ensuring regulatory parity across the full universe of mobile services.[76]

J. Implementation of Finder's Preferences

The Part 90 rules currently provide for a "finder's preference" in order to recapture unused spectrum.[77] The Commission proposed to authorize a similar procedure in the *Part 22 Rewrite*.[78] In light of the Commission's practical experience with such filings under Part 90, it should offer specific guidance as to the sort of showings considered sufficient to justify a finder's preference. Among other things, the FCC should indicate that monitoring to

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[74] *Id.*, n.259.

[75] Petition for Rulemaking by Telocator, RM-7823 (Sept. 4, 1991).

[76] PCS licensees are explicitly permitted to provide PMRS offerings using PCS spectrum. *See Second Report and Order*, 9 FCC Rcd at 1461. BRS licensees, since they can utilize "excess" capacity for CMRS, are also implicitly authorized to provide both CMRS and PMRS offerings using the same spectrum. *Id.*, 9 FCC Rcd at 1459.

[77] 47 C.F.R. §90.173(k) (1993).

[78] *Part 22 Rewrite Notice*, 7 FCC Rcd at 3660.

determine the presence or absence of traffic on a channel (as opposed to content) does not constitute a violation of the Electronic Communications Privacy Act.[79]

K. Licensing of Transmitters Per Call Sign

Although not explicitly noted in the *Further Notice*, PCIA observes that there is a discrepancy between Part 90 and Part 22 with respect to the number of transmitters that can be authorized per call sign. Part 22 currently permits licensing of a up to 99 transmitters per call sign, whereas Part 90 only allows six transmitters per call sign. While this may not appear to be a grave disparity in the rules, PCIA notes that the difference does create additional, and apparently unnecessary, recordkeeping problems for Part 90 CMRS licensees. Accordingly, PCIA submits that the Commission should permit licensing of transmitters per call sign on a basis consistent with or similar to the current Part 22 process.

L. Forfeitures

PCIA also observes that there is no proposal in the *Further Notice* for rectifying the serious discrepancies that currently exist with respect to the amount of forfeitures to be paid by CMRS licensees. For Part 22 CMRS licensees, the maximum forfeiture is $100,000 for each violation or each day of continuing violation (not to exceed $1,000,000). For Part 90 CMRS licensees, the maximum forfeiture is $10,000 for each violation or each day of continuing violation (not to exceed $75,000). To achieve comparable regulation, comparable forfeitures must be applied to all CMRS licensees.

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[79] 18 U.S.C. §§ 2510-2520 (1988 & Supp. IV 1992).

As PCIA has related in a prior pleading regarding application of the forfeiture guidelines, however, the forfeiture schedules applicable to CMRS licensees should not be set at the current levels for common carrier licensees.[80] Under the Commission's forfeiture schedule, common carriers -- which include hundreds of paging operators with fewer than 1,000 customers -- are treated no differently than regional local exchange telephone companies with millions of customers. PCIA continues to believe that equity dictates altering the forfeiture guidelines to differentiate explicitly between carriers based upon their size. In particular, PCIA believes the large majority of CMRS operations should be treated under the forfeiture guideline limits currently set for private licensees.

M. Microfiche Requirements

Another regulation that PCIA believes should be addressed in this proceeding is the Part 22 requirement to provide microfiche copies of applications and filings. The Common Carrier Bureau currently requires all Part 22 applications exceeding five pages to be submitted in microfiche form as well as the paper original. In the *Part 22 Rewrite*, the Bureau contemplated extending the microfiche requirements to all Part 22 applications, regardless of length, with exemptions only for short pleadings under five pages. Part 90 applications and related filings, however, currently are not subject to a microfiche filing requirement. No provision is made in the *Further Notice* for rectifying this regulatory differential.

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[80] Telocator Petition for Reconsideration, FCC 91-217 (filed Sep. 9, 1991) at 3.

PCIA believes the microfiche requirement should be eliminated. Since only the largest carriers can afford in-house microfiche machines, applicants are required to delay regulatory filings, and often service to the public, to obtain the necessary microfiching by outside vendors. In addition, these filings can impose additional costs of $50-$100 per application for routine facilities applications, or more if expedited processing is requested. Furthermore, since topographic maps lose virtually all useful detail in microfiching, the marginally improved access to records offered by microfiche are offset by the inability to obtain useful data. These problems will only get worse if they are extended to all CMRS applicants. Instead of relying on dated technology, PCIA believes the Commission should work with the industry to develop electronic filing procedures, which will have the same or greater benefits alleged to be associated with the microfiche filing requirements, without the time, cost, and inconvenience associated with the latter media. In any event, however, all CMRS applicants should be governed by the same requirements.

N. Fixed Microwave Licensing

Current common carrier and private mobile licensees rely heavily on fixed microwave links for efficient and economic systems operations. These fixed links serve as necessary backhaul and interconnection facilities supporting land mobile services. For Part 22 licensees, these facilities are available under Part 21 of the Commission's rules. Part 90 licensees, however, apply for and are licensed under Part 94. In order to permit continued successful use of fixed microwave links, without increasing confusion for licensees and applicants any more than necessary, hampering staff processing of applications, or unfairly

burdening usage of microwave frequencies allocated to one set of entities over another, PCIA believes the Commission necessarily must also address rule changes to the Part 21 and Part 90 rules, which could be undertaken in a *Third Notice of Proposed Rulemaking* in this proceeding.

VI. CONCLUSION

PCIA commends the Commission for its exhaustive efforts to achieve regulatory parity between substantially similar CMRS services. The *Further Notice* generally provides a comprehensive and considered framework for the regulation of land mobile services under the *Budget Act*. As discussed above, however, PCIA's suggestions for streamlining, improving, or modifying the proposal should offer great benefits for both the Commission and all CMRS providers. Accordingly, PCIA urges the Commission to adopt the changes proposed herein.

Respectfully submitted,

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